



Jim Doyle  
Governor

Helene Nelson  
Secretary

**State of Wisconsin**

**Department of Health and Family Services**

September 2, 2004

Ms. Mary Van Dyke  
Rock County HSD-CPS Division  
P.O. Box 1649  
Janesville, WI 53547

Dear Ms. Van Dyke:

As the state agency administering child protective services (CPS), Governor Doyle asked the Department of Health and Family Services (DHFS) to respond to your concerns about the implementation of HIPAA within the CPS program in the Rock County Human Services Department. We are aware counties have continuing questions about the effect of HIPAA on the sharing of health information within Human Service Departments (HSD). I am also aware of your department's request for the DHFS Division of Children and Family Services (DCFS) to review the draft policy on information sharing within the HSD. Our division facilitates HIPAA compliance within DHFS; therefore we will be working with DCFS in responding to your policy review request.

I share your frustration over the difficulty of applying HIPAA to county human services. It is especially challenging because many decisions about the applicability of the privacy rule must ultimately be made by each individual county, as a separate legal entity covered by HIPAA. These decisions are made more complex by the many different ways counties are organized and the varying units and programs impacted by HIPAA. To assist counties, our department will be issuing a guidance paper this fall. In the meantime, we are addressing your specific question in the remainder of this letter.

Your question, as we understand it, is whether HIPAA permits protected health information (PHI) to be disclosed by the mental health division of the Rock County HSD to the CPS unit of the HSD without authorization by the subject of the record. Rock County designated the county and the HSD as hybrid entities under HIPAA. It further designated the mental health division of the HSD as a covered health care component and the CPS unit as not covered by HIPAA.

Prior to HIPAA, state law allowed sharing of health information between sub-units of a county HSD. Specifically, Wis. Stat. § 46.23(3)(e) permits the exchange of confidential information between subunits of a county HSD without the informed consent of the subject, if the exchange is necessary to enable an employee or service provider to perform his or her duties or if necessary to allow the HSD to coordinate delivery of services.

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HIPAA generally does not allow the disclosure of PHI between the covered components of a hybrid entity and those components not covered without an appropriate authorization. The information you describe in your message would be considered PHI, and thus not subject to disclosure without authorization. I assume this is the reasoning behind the opinion of your Medical Records specialist.

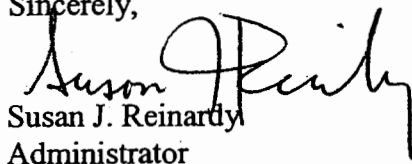
HIPAA, however, contains exceptions to this general rule and addresses uses and disclosures of PHI for specific purposes. In child abuse and neglect situations, HIPAA permits covered entities and covered components in a hybrid entity such as the mental health component of the Rock County HSD to disclose PHI to a public health authority or other appropriate government authority authorized by law to receive reports of child abuse without authorization by the subject of the record. 45 CFR §164.512(b)(1)(ii).

Wis. Stat. § 48.981(2) & (3) require certain persons to report information about suspected child abuse or neglect to county departments providing child welfare services. These departments are required by Wis. Stat. § 48.981(3)(c) and Wis. Stat. § 48.57(1)(a) to conduct a diligent investigation upon receipt of such report. As Rock County is organized, Wis. Stat. § 46.23 allows the county HSD to perform the duties of a county child welfare department. Thus, it is our professional opinion the CPS unit of the HSD may receive otherwise protected and confidential information from other parts of the HSD without client/parent authorization if the information is related to a report of child abuse. The amount and kind of information disclosed is limited by HIPAA to the minimum necessary for the purpose of the disclosure and by Wis. Stat. § 46.23 to what is needed for the HSD employee or contractor to perform his or her duties, or for the HSD to coordinate service delivery.

I urge you to discuss this matter with your Corporation Counsel, as only your county attorney can provide legal advice to you. However, we believe the sharing of information from within the HSD to the CPS unit for investigation of reports of child abuse is permitted under HIPAA, without obtaining an authorization from the subject of the record containing PHI.

Please direct any questions you have about our response to Ted Ohlswager, Chief, Center for Uniformity, Security & Privacy (608-266-5314).

Sincerely,

  
Susan J. Reinardy  
Administrator

cc: Kitty Kocol  
Ted Ohlswager  
Sally Biddick, RCHSD  
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